

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
X.M., an Infant, by his Mother and Natural
Guardian, JUDITH DALEY, and JUDITH
DALEY, Individually,

Plaintiffs,

18-cv-04891 (LMS)

- against -

UNITED STATES OF AMERICA,

Defendants.

-----X

AMENDED ORDER APPROVING SETTLEMENT ON BEHALF OF A MINOR

On this 29th day of June, 2020, the above referenced matter came on for hearing and approval by the Court as to the reasonableness of a settlement between the United States of America and Plaintiffs X [REDACTED] M [REDACTED], a minor, and JUDITH DALEY, Individually and as Mother and Natural Guardian of infant plaintiff X [REDACTED] M [REDACTED]. Infant plaintiff X [REDACTED] M [REDACTED] appeared through his counsel of record and his mother, JUDITH DALEY. Plaintiff JUDITH DALEY individually and as Mother and Natural Guardian of X [REDACTED] M [REDACTED] appeared in person and through counsel of record.

The complete and precise terms and conditions of the settlement are set forth in the Stipulation for Compromise and Release of Federal Tort Claims Act Claims Pursuant to 28 U.S.C. §2677 (hereinafter “Stipulation”), attached hereto as EXHIBIT “A”. The Court has reviewed the Stipulation, the plaintiffs’ motion for approval of the settlement, and the documents submitted in support of the motion, and heard plaintiffs’ arguments in favor of the settlement. The Court is fully informed of the specifics of the full and final terms and conditions of the settlement, including the necessity of the approval by the Attorney General of the United States

and the availability of funds in the account established by Congress for the payment of settlement and judgments for claims cognizable under 42 U.S.C. §233(g) and 42 U.S.C. §233(k).

The Court finds that the terms and conditions of this settlement, as set forth in the Stipulation, are fair, reasonable, and in the best interests of the minor plaintiff. The Court further finds that the terms and conditions of this settlement, as set forth in the Stipulation, satisfy the requirements of Local Civil Rule 83.2.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that the settlement, as set forth in EXHIBIT “A”, is hereby approved. It is further Ordered that JUDITH DALEY, as Mother and Natural Guardian of X [REDACTED] M [REDACTED] a minor, is authorized and required to sign the Stipulation, and any other documents that are necessary to consummate this settlement, and to provide any information and documentation necessary for the purchase of the annuity contract on behalf of X [REDACTED] M [REDACTED], a minor.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that the settlement amount of FOUR HUNDRED FIFTY THOUSAND and 00/100 (\$450,000.00) DOLLARS for a total value, including Medical Indemnity Fund damages, of SEVEN HUNDRED TWENTY TWO THOUSAND EIGHT HUNDRED THIRTY and 50/100 (\$722,830.50) DOLLARS, shall be distributed according to the terms and conditions of the Stipulation.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that the infant plaintiff X [REDACTED] M [REDACTED] has been deemed by the Court to have sustained a birth-related neurological injury as defined in Public Health Law §2999-h(1) and 10 NYCRR §69-10.1.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that the attorneys’ fees in this action shall not exceed twenty-five percent (25%) of the settlement value including Medical Indemnity Fund Damages. The Court finds that the costs and expenses associated with the

litigation are \$14,152.48 and that such costs and expenses are fair, reasonable and necessary. It is hereby further Ordered that such costs and expenses are approved and are to be paid as provided in the Stipulation and this Order.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that all future medical expenses of the infant plaintiff X [REDACTED] M [REDACTED] will be paid by the Medical Indemnity Fund in lieu of that portion of the settlement providing for payment of future medical expenses;

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that plaintiffs are legally responsible for any and all past, present, and future liens or claims for payment or reimbursement, including any liens or claims for payment or reimbursement by Medicaid, Medicare, or healthcare providers arising from the subject matter of the action against the United States of America. The Court hereby Orders plaintiffs, by and through their attorneys, to satisfy or resolve any and all such past, present, and future liens or claims for payment or reimbursement asserted by any individual or entity, including Medicaid or Medicare. The Court further Orders that plaintiffs, by and through their attorneys, provide to the United States of America the information required by the Stipulation regarding the satisfaction or resolution of such liens or claims for payment or reimbursement within the time specified in said Stipulation.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that the following amounts shall be distributed from the settlement proceeds as follows:

- a. \$14,152.48 to Sanocki Newman & Turret, LLP, as and for reimbursement of disbursements expended;
- b. \$177,169.50 to Sanocki Newman & Turret, LLP as and for its attorneys' fees;

c. \$11,499.14 to New York State Department of Health, in full satisfaction of the lien asserted on behalf of the New York State Medicaid Program;

d. \$247,178.88 to purchase future periodic payments as follows:

For X [REDACTED] M [REDACTED]:

A. Guaranteed payments continuing for four (4) years only, providing \$50,000.00 per year, level income, with first payment commencing on 09/07/2034.

Guaranteed payments continuing for eight (8) years only, providing \$1,352.50 per month, level income, with first payment commencing on 09/07/2038.

Guaranteed Lump Sum Payment of:

\$100,000.00 on 09/07/2046

The total cost for this annuity: \$247,178.88

Annuity Issuer: Pacific Life & Annuity Company

This annuity will be purchased and owned by the United States of America.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that the structured settlement payments listed above are based on current annuity rates. In the event that the total purchase price of the annuity contract has changed by the date of purchase, the annuity payments set forth above shall be adjusted either upward or downward so the purchase price of the annuity contract shall be neither more nor less than Two Hundred Forty Seven Thousand One Hundred Seventy Eight dollars and Eighty Eight cents (\$247,178.88).

IT IS FURTHER ORDERED, ADJUDGED, and DECREED, the defendant(s) and/or its insurer(s) shall arrange for the purchase of an annuity contract from Pacific Life & Annuity Company, an A.M. Best Company rated A+, Class XV, and licensed to do business in the State of New York.

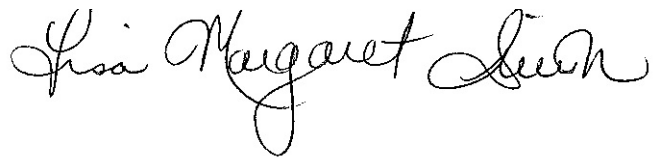
IT IS FURTHER ORDERED, ADJUDGED, and DECREED, that in the event X [REDACTED] M [REDACTED] should die before receiving all future guaranteed periodic payments set forth above,

the remaining guaranteed payments shall be made to his Estate, or any such person or persons that he may so designate in writing upon attaining the age of majority.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that all sums set forth herein constitute damages on account of personal physical injuries or physical sickness, within the meaning of Section 104(a)(2) of the Internal Revenue Code.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that plaintiffs and their successors, heirs, executors, administrators, and assigns shall apply for X. [REDACTED] M. [REDACTED]'s enrollment in the Medical Indemnity Fund by submitting a complete and accurate application for enrollment and any other documentation or information required for enrollment and by signing any documentation required for enrollment. Plaintiffs and their successors, heirs, executors, administrators, and assigns shall continue to provide the Fund any documentation, information and signatures necessary for X. [REDACTED] M. [REDACTED]'s continued enrollment in the Fund.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that the Court will not retain jurisdiction over the action against the UNITED STATES OF AMERICA or the settlement, upon the Court's approval of the Stipulation and dismissal of this action with prejudice pursuant to the terms of the Stipulation.

A handwritten signature in cursive script, reading "Lisa Margaret Smith".

HON. LISA M. SMITH
UNITED STATES MAGISTRATE JUDGE
Dated this 29th day of June, 2020
White Plains, New York